

letters came to the defendant in the due course of mails; that the defendant believed in the genuineness of the letters and that these letters related to the matters in controversy in this suit. I have ruled that these letters are competent for you to consider as bearing on the question of intent. If the defendant made the statements contained on the cartons, labels, and circulars believing in the truth of the statements made in these letters, and believing that they told the truth, then I charge you that there can be no fraud on the part of the defendant. * * * You may now retire, gentlemen."

The jury, after due deliberation returned verdicts finding all products misbranded. On June 1, 1931, decrees of condemnation and forfeiture were entered, and it was ordered by the court that the products be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18502. Adulteration and misbranding of Hien Fong essence. U. S. v. 3 Dozen Large-Sized Bottles et al., of Hien Fong Essence. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 26085, 26086. I. S. Nos. 26594, 26600. S. Nos. 4325, 4326.)

Examination of samples of a drug product, known as Hien Fong essence, having shown that the article contained less alcohol than declared, and that the carton and bottle labels and the accompanying circular bore statements representing that the article possessed curative and therapeutic properties which it did not possess, the Secretary of Agriculture reported to the United States attorney for the eastern district of Wisconsin the interstate shipments herein described, involving quantities of the product located at Milwaukee, Wis.

On March 23, 1931, the United States attorney filed in the district court of the United States for the district aforesaid libels praying seizure and condemnation of 5 dozen large-sized bottles, 16 $\frac{1}{2}$ dozen medium-sized bottles, and 23 $\frac{1}{2}$ dozen small-sized bottles of the said Hien Fong essence, remaining in the original unbroken packages at Milwaukee, Wis., alleging that the article had been shipped by the Knorr Medical Co., from Detroit, Mich., on or about February 3, 1931, and had been transported from the State of Michigan into the State of Wisconsin, and charging adulteration and misbranding in violation of the food and drugs act as amended.

Analysis of a sample of the article by this department showed that it consisted essentially of volatile oils, including spearmint oil, peppermint oil, and camphor, a small proportion of ether, extracts of plant drugs, alcohol (52.5 per cent by volume), and water.

It was alleged in the libels that the article was adulterated in that it was sold under the following standard of strength, to wit, "Alcohol 60%," and the strength of the said article fell below such professed standard, since it contained a less amount of alcohol.

Misbranding was alleged for the reason that the statement on the carton and bottle labels, "Alcohol 60%," was false and misleading when applied to an article containing a less amount of alcohol, and for the further reason that the package failed to bear a statement on the label of the quantity or proportion of alcohol contained in the article, since the declaration made was incorrect. Misbranding was alleged for the further reason that the following statements regarding the curative or therapeutic effects of the article, appearing on the carton and bottle labels and in the accompanying circular, were false and fraudulent, since the said article contained no ingredient or combination of ingredients capable of producing the effects claimed: (Carton) "A medical preparation of value for the treatment of * * * Throat and Stomach Troubles. * * * Catarrhal conditions, Neuralgia, etc. Throat troubles such as Sore Throat, Tonsillitis, * * * Stomach troubles such as Indigestion, Colic, Summer Complaint, Stomach Cramps, and for Menstrual or periodic Pains;" (bottle) "Value for the treatment of * * * Throat and Stomach Troubles. * * * Catarrhal conditions, Neuralgia, etc. Throat troubles such as Sore Throat, Tonsillitis, * * * Stomach troubles such as Indigestion, Colic, Summer Complaint, Stomach Cramps and for Menstrual or periodic Pains;" (circular) "Directions. In cases of Sore Throat and Tonsillitis, and to guard against Diseases infectious through the Mouth and Throat, gargle repeatedly * * * For Indigestion, Colic, Stomach Cramps and for Menstrual or Periodic Pains * * * For Cholera Morbus and Summer Complaint of children * * * Catarrhal Conditions, etc. * * * In cases of Neuralgia, Chilblains, * * * Headache."

On May 13, 1931, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*

18503. Misbranding of McCormick's cold and pain salve. U. S. v. 9 Jars of McCormick's Cold and Pain Salve. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 25240. I. S. No. 3823. S. No. 3519.)

Examination of samples of a drug product, known as McCormick's cold and pain salve, from the shipment herein described having shown that the bottle and carton labels and the accompanying circular bore statements representing that the article possessed curative and therapeutic properties which it did not possess, the Secretary of Agriculture reported the matter to the United States attorney for the western district of South Carolina.

On February 18, 1931, the United States attorney filed in the district court of the United States for the district aforesaid a libel praying seizure and condemnation of nine jars of McCormick's cold and pain salve at Spartanburg, S. C., alleging that the article had been shipped by McCormick & Co., from Baltimore, Md., on or about December 12, 1929, and had been transported from the State of Maryland into the State of South Carolina, and charging misbranding in violation of the food and drugs act as amended.

The article was labeled in part: (Bottle) "For * * * Catarrh, Etc. * * * For Eczema * * * or Other Inflammation of the Skin. * * * McCormick's * * * Pain Salve * * * For * * * Bronchitis, Pneumonia, etc. If Pneumonia or other serious complications are suspected, call a physician at once. * * * Repeat treatment every three or four hours. Sore Throat. * * * Coughs, Whooping Cough;" (carton) "Pain Salve * * * Valuable in the treatment * * * Sore Throat, LaGrippe, Pneumonia * * * Skin Irritations. * * * Internally by the Inhalation of the wonderfully healing vapors which it evolves, McCormick's Salve penetrates the most minute recesses of the nose, throat, lungs and bronchial tubes, allaying pain and reducing inflammation wherever it reaches. * * * Useful in all forms of Inflammation such as Asthma, Bronchitis, Catarrh * * * Coughs, Hay Fever, LaGrippe, Pneumonia, Sore Throat, Whooping Cough * * * Boils and * * * Eczema * * * Headache, Neuralgia, Rheumatism, Piles;" (circular) "Pain Salve is primarily an inhalant for treatment of diseases of the lungs and air passages of an inflammatory character. The aromatic and healing vapors which it evolves, penetrate and carry their virtues to the most minute recesses of the affected organs. * * * Coughs * * * Hay Fever * * * LaGrippe * * * Pneumonia * * * Tonsillitis, Sore Throat, Hoarseness * * * Whooping Cough * * * Boils * * * Eczema * * * Croup * * * in Poultry * * * Distemper in Dogs or Horses * * * Pneumonia or Pleurisy in Horses."

Analysis of a sample of the article by this department showed that it consisted essentially of a petrolatum base containing volatile oils including eucalyptol, camphor, and menthol.

It was alleged in substance in the libel that the article was misbranded in violation of section 8, paragraph 3, of the act as amended, in that the following statements appearing on the jar label, regarding the curative or therapeutic effects of the said article, were applied to the said article knowingly and in reckless and wanton disregard of their truth or falsity, so as to represent falsely and fraudulently to the purchasers and create in the minds of such purchasers the impression and belief that the article contained ingredients or medicinal agents effective in the diseases and conditions named therein; whereas it contained no ingredient or combination of ingredients capable of producing the effects claimed: "For * * * Catarrh, etc. * * * For Eczema, * * * or other inflammation of the skin. * * * McCormick's * * * Pain Salve * * * For * * * Bronchitis, Pneumonia, etc. If pneumonia or other serious complications are suspected, call a physician at once. * * * Repeat treatment every three or four hours. Sore Throat, * * * Coughs, Whooping Cough."

On June 25, 1931, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

ARTHUR M. HYDE, *Secretary of Agriculture.*